TESTIMONY OF
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BEFORE THE
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES
ON H.R. 65 AND H.R. 1294

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Good morning, Mr. Chairman and Members of the Committee. My name is Carl Artman. I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). I am here today to provide the Administration's testimony on H.R. 65, the "Lumbee Recognition Act" and H.R. 1294, the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2006."

The acknowledgment of the continued existence of another sovereign is one of the most solemn and important responsibilities delegated to the Secretary of the Interior. Federal acknowledgment enables Indian tribes to participate in Federal programs and establishes a government-to-government relationship between the United States and the Indian tribe, and has considerable social and economic impact on the petitioning group, its neighbors, and Federal, state, and local governments. Acknowledgment carries with it certain immunities and privileges, including exemptions from state and local jurisdictions and the ability of newly acknowledged Indian tribes to undertake certain economic opportunities.

We recognize that under the United States Constitution, Congress has the authority to recognize a "distinctly Indian community" as an Indian tribe. But along with that authority, it is important that all parties have the opportunity to review all the information available before recognition is granted. That is why we support a recognition process that requires groups go through the Federal acknowledgment process because it provides a deliberative uniform mechanism to review and consider groups seeking Indian tribal status.

Legislation such as H.R. 65 and H.R. 1294 would allow these groups to bypass this process - allowing them to avoid the scrutiny to which other groups have been subjected. While legislation in Congress can be a tool to accomplish this goal, a legislative solution should be used sparingly in cases where there is an overriding reason to bypass the process.

The Administration strongly supports all groups going through the Federal acknowledgement process under 25 CFR Part 83. The Administration believes that the

Federal acknowledgment process set forth in 25 CFR Part 83, "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe," allows for the uniform and rigorous review necessary to make an informed decision establishing this important government-to-government relationship. Before the development of these regulations, the Federal government and the Department of the Interior made determinations as to which groups were Indian tribes when negotiating treaties and determining which groups could reorganize under the Indian Reorganization Act (25 U.S.C. 461). Ultimately, treaty rights litigation on the West coast, and land claims litigation on the East coast, highlighted the importance of these tribal status decisions. Thus, the Department, in 1978, recognized the need to end *ad hoc* decision making and adopt uniform regulations for Federal acknowledgment.

Under the Department's regulations, petitioning groups must demonstrate that they meet each of seven mandatory criteria. The petitioner must:

> (1) demonstrate that it has been identified as an American Indian entity on a substantially continuous basis since 1900;
>
> (2) show that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present;
>
> (3) demonstrate that it has maintained political influence or authority over its members as an autonomous entity from historical times until the present;
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> (4) provide a copy of the group's present governing document including its membership criteria;
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> (5) demonstrate that its membership consists of individuals who descend from an historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity and provide a current membership list;
>
> (6) show that the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe; and
>
> (7) demonstrate that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

A criterion shall be considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion. A petitioner must satisfy all seven of the mandatory criteria in order for the Department to acknowledge the continued tribal existence of a group as an Indian tribe. Currently, the Department's workload of 17 groups seeking Federal acknowledgment consists of 8 petitions on

"Active Consideration" and 9 petitions on the "Ready, Waiting for Active Consideration" lists.

H.R. 65

In 1956, Congress designated Indians then "residing in Robeson and adjoining counties of North Carolina" as the "Lumbee Indians of North Carolina" in the Act of June 7, 1956 (70 Stat. 254). Congress went on to note the following:

> Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.

In 1989, the Department's Office of the Solicitor advised that the 1956 Act forbade the Federal relationship within the meaning of the acknowledgment regulations, and that the Lumbee Indians were, therefore, precluded from consideration for Federal acknowledgment under the administrative process. Because of the 1956 Act, legislation is necessary for the Lumbee Indians to be afforded the opportunity to petition for tribal status under the Department's regulations. The Department would welcome the opportunity to assist the Congress in drafting such legislation.

If Congress elects legislative recognition of the Lumbee, then the Department makes the following comments on H.R. 65, as currently drafted.

H.R. 65 extends Federal recognition to the "Lumbee Tribe of North Carolina" and permits any other group of Indians in Robeson and adjoining counties whose members are not enrolled in the Lumbee Tribe to join the Lumbee Tribe or to petition under the Department's acknowledgment regulations. The Department's Office of Federal Acknowledgment (OFA) has received letters of intent to petition from eight groups that may overlap with each other: the Cherokee Indians of Robeson and Adjoining Counties, the Lumbee Regional Development Association, the Cherokee Indians of Hoke County, Inc., the Tuscarora Nation of North Carolina, the Tuscarora Nation East of the Mountains, the Hatteras Tuscarora Indians, the Tuscarora Indian Tribe – Drowning Creek Reservation, and the Tuscarora Nation of Indians of the Carolinas. In addition, OFA has identified over 90 names of groups that derive from these counties and are affected by the 1956 Lumbee Act. Some of these groups claim to be the "Lumbee" Tribe. Therefore, we recommend Congress clarify the Lumbee group that would be granted recognition under this bill. Not doing so could potentially expose the Federal government to unwarranted lawsuits and possibly delay the Federal acknowledgment process.

Under H.R. 65, the State of North Carolina has jurisdiction over criminal and civil offenses and actions on lands within North Carolina owned by or held in trust for the Lumbee Tribe or "any dependent Indian community of the Lumbee Tribe."

We are concerned with the provision requiring the Secretary, within one year, to verify the membership roll and then to develop a determination of needs and budget to provide Federal services to the Lumbee group's eligible members. Under the provisions of this bill, the "Lumbee Tribe", which the Department understands includes over 53,000 members, would be eligible for benefits, privileges and immunities that are similar to those possessed by members of other Federally recognized Indian tribes. In our experience verifying a membership roll is an extremely involved and complex undertaking that can take several years to resolve with much smaller Indian tribes. While we believe there are approximately 53,000 members, we do not currently have access to the Lumbee's current membership roll and thus do not have the appropriate data to estimate the time to verify them nor do we know how many Lumbee members may be eligible to participate in Federal needs based programs. Moreover, H.R. 65 is silent as to the meaning of verification for inclusion on the Lumbee group's membership roll.

In addition, H.R. 65 may raise a constitutional problem by purporting to require the President to submit annually to the Congress as part of his annual budget submission a budget that is recommended by the head of an executive department for programs, services and benefits to the Lumbee. Under the Recommendations Clause of the United States Constitution, the President submits for the consideration of Congress such measures as the President judges necessary and expedient.

Should Congress choose not to enact H.R. 65, the Department feels, at a minimum, Congress should amend the 1956 Act to afford the Lumbee Indians the opportunity to petition for tribal status under the Department's Federal acknowledgment regulations.

H.R. 1294

H.R. 1294, the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2006," provides Federal recognition as Indian tribes to six Virginia groups: the Chickahominy Indian Tribe, the Chickahominy Indian Tribe – Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe.

Under 25 CFR Part 83, these six groups have submitted letters of intent and partial documentation to petition for Federal acknowledgment as Indian tribes. Some of these groups are awaiting technical assistance reviews under the Department's Federal acknowledgment regulations. As stated above, the purpose of the technical assistance review is to provide the groups with opportunities to supplement their petitions due to obvious deficiencies and significant omissions. To date, none of these petitioning groups have submitted completed documented petitions demonstrating their ability to meet all seven mandatory criteria.

We look forward to working with you as you deliberate H.R. 65 and H.R. 1294.

This concludes my prepared statement. I would be happy to answer any questions the Committee may have.